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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/173,134 10/15/98 GABRIEL

G 364106/176

EXAMINER

PM82/1229

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ART UNIT

PAPER NUMBER

3643

DATE MAILED:

12/29/00

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 14

Application Number: 09/173,134  
Filing Date: October 15, 1998  
Appellant(s): GABRIEL ET AL.

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Byron Olsen  
For Appellant

**EXAMINER'S ANSWER**

This is in response to appellant's brief on appeal filed 10/20/00.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 1-6 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

3978819

Lovitt

9-1976

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovitt (US 3,978,819). Lovitt discloses a multipurpose cage level barrier rodent cage for housing multiple species of rodents in a ventilated rack and cage system comprising

NO

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rack 11 having a depth; a cage disposed in the rack in which the cage has a cage bottom 17 having a plurality of integral side walls 23-26, a floor 21, and an open top. In addition, Lovitt discloses in column 3, lines 15-16, adding more than one row of cages on the tier, thus creating a double-sided rack. However, Lovitt is silent about the floor having a length  $l$  and a width  $w$  wherein  $80 \text{ in}^2 \leq l \times w \leq 110 \text{ in}^2$ , the length being less than substantially 18 inches or 36 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dimension the cage bottom of Lovitt with various length, width, and depth in order to accommodate different sizes of the contained animal(s). In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cage of Lovitt varied in sizes, since it has been held that where the general experimental conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 5, Lovitt does not disclose a sum of the length of a portion extending beyond the rack and a depth of the rack being less than 36 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dimension the cage bottom and the rack of Lovitt with various lengths, widths, and depths in order to accommodate different sizes of the contained animal and different housing entrances where the rack is to be stored. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cage of Lovitt varied in sizes, since it has been held that where the general

experimental conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

**(11) Response to Argument**

Appellant argues that the solution suggested by the Examiner captures the prior art and the disadvantages thereof, i.e. namely differently sized racks and variously sized cages to accommodate variously sized animals and that it was not until the invention of the applicants that a single cage and rack was capable of housing multiple species of animals with a single-sized cage. Lovitt's cage/rack system is capable of housing more than one rodents in Lovitt's cage 17. Lovitt does not teach that each cage is made and sized for a particular rodent.

Appellant argues that Lovitt does not adherence to Federal Guidelines with regard to appropriate caging for laboratory animals, i.e. cage dimensions, but rather focuses on an entirely different problem with an entirely different set of concerns and hurdles preventing success. If Federal Guidelines are to be applied for the present invention, the same guidelines are to be applied for Lovitt's invention. One of ordinary skill in the art would make the cage floor of Lovitt in conformance with Federal Guidelines in order to maintain his/her practice in the industry. Guidelines are to be applied for all inventions in the art of cage making for laboratory animals and not just for the present invention. Even if Lovitt concentrated on waste removal, disinfectant, etc. in Lovitt's cage system, Lovitt still has to meet Federal Guidelines regarding the dimension in order to provide adequate living space for the contained animal(s).

Appellant argues that Lovitt does not teach a cage level barrier system; therefore, it does not teach the special environment for which the present invention is designed, namely an environment in which the entire environment is controlled by the cage size, materials, food, and water supplying mechanism. Lovitt's cage system is a cage level barrier system as defined by the Applicant because it facilitate in the care and maintenance of the occupants of the cage such as rodents. Therefore, the factors listed above such as the cage size, materials, food, and water supply are a part of the care and maintenance system in Lovitt's cage system.

Appellant argues against the Coiro patent; however, the Coiro patent was not used in the rejections. Therefore, the Coiro patent will not be addressed.

Appellant argues that the present invention has satisfied a long felt need is relevant evidence of the non-obviousness and patentability of an invention. Appellant did not show that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no showing that persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references and still were unable to solve the problem. See MPEP § 716.04.

Appellant argues that the examiner fails to make out a case of prima facie obviousness because the Lovitt patent fails to provide a cage level barrier rodent cage footprint to accommodate multiple animal species in a rack and ventilation system. See the above rejections and explanation to the arguments.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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December 28, 2000

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